

ARKANSAS SUPREME COURT

No. CR 05-453

NOT DESIGNATED FOR PUBLICATION

VINCENT M. COOPER
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered March 16, 2006

APPEAL FROM THE CIRCUIT COURT OF
MILLER COUNTY, CR 96-516-2, CR 98-358,
HON. KIRK D. JOHNSON, JUDGE

APPEAL DISMISSED

PER CURIAM

Vincent M. Cooper filed the instant appeal from the partial denial of his petition for writ of *habeas corpus*. Cooper argued that the trial court illegally modified an executed sentence in two cases. We dismiss the appeal for procedural reasons.

The record shows that in case number CR 96-516, Cooper received probation after entering a plea of guilty. In case number CR 98-358, Cooper received 120 months' imprisonment and suspended imposition of eighty-four months of the sentence after entering a plea of guilty. The trial court revoked Cooper's probation in CR 96-516, and he received 120 months' imprisonment and suspended imposition of eighty-four months of the sentence.

After his release from incarceration, a jury found Cooper guilty of other charges in CR 2002-119.¹ As a result, the trial court revoked the suspended imposition of sentence in CR 96-516 and CR 98-358 and in each case imposed a sentence of forty-eight months' imprisonment with no time suspended and included the original fines and costs in the sentences.

Cooper did not appeal the judgments entered as a result of the revocation of the suspended imposition of sentences in either CR 96-516 or CR 98-358. However, Cooper filed a petition for writ of *habeas corpus* in the original trial court that imposed the sentences he received in CR 96-516 and

¹The Arkansas Court of Appeals reversed and remanded the verdict in *Cooper v. State*, CACR 03-542 (Ark. App. April 14, 2004). Cooper was not re-tried on the charges in that case.

CR 98-358. The petition sought to overturn both sentences imposed, arguing that the trial court lacked jurisdiction to enter a judgment in both matters. After a hearing on the matter, the trial court entered an order that set aside the judgment in CR 96-516, but denied Cooper's petition for writ of *habeas corpus* as to CR 98-358. Now before this court is appellant Cooper's appeal from that order.

Any petition for writ of *habeas corpus* is properly addressed to the circuit court in the county in which the petitioner is held in custody, unless the petition is filed pursuant to Act 1780 of 2001.² Arkansas Code Annotated § 16-112-105 (1987) requires certain procedural requirements be met when requesting a court to issue a writ of *habeas corpus*. The writ must be directed to the person in whose custody the prisoner is detained. Additionally, the writ should be issued by a court that has personal jurisdiction over the defendant. Otherwise, although a court may have subject-matter jurisdiction to issue the writ, a writ of *habeas corpus* cannot be returned to the court issuing the writ; a court does not have personal jurisdiction to issue and make returnable before itself a writ of *habeas corpus* where the petitioner is in another county. *See, e.g., State Dept. of Public Welfare v. Lipe*, 257 Ark. 1015, 521 S.W.2d 526 (1975); *Johnson v. McClure*, 228 Ark. 1081, 312 S.W.2d 347 (1958); *State v. Ballard*, 209 Ark. 397, 190 S.W.2d 522 (1945).

In the present matter, appellant is in the custody of the Arkansas Department of Correction in Lincoln County. However, appellant filed his petition for writ of *habeas corpus* in the Circuit Court of Miller County. As appellant's petition for writ of *habeas corpus* was not filed pursuant to Act 1780, appellant should have filed his petition in the Circuit Court of Lincoln County. The Circuit Court of Miller County does not have personal jurisdiction over appellant and cannot release a prisoner who was not in custody within that county. *See Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991). Therefore, the Circuit Court of Miller County cannot issue a writ of *habeas corpus* that would be returnable to the court to effect appellant's release and appellant cannot obtain the specific relief he seeks in this matter.

²Act 1780 of 2001, codified at Ark. Code Ann. §§ 16-112-201–16-112-207 (Supp. 2003), provides for the filing of a petition for writ of *habeas corpus* in the trial court if certain grounds are raised.

Appeal dismissed.